IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.29 OF 2007

Mrs Ottio D'Souza & Anr. ...Petitioners

Versus

Mark Anthony Pereira ...Respondent

Shri Kishore Jain i/by M/s Bhaishankar Kanga & Girdharilal for the Petitioners.
Shri A.N.Sawant for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 25, 2007.

P.C.:

1. Submissions of the Advocates appearing for the parties were heard on the last date. The Petitioners have alleged breach of consent order passed in Suit No.7401 of 1976 on the basis of consent terms filed on 06th January, 2004.

2. It is an admitted position that in the consent terms there is no specific undertaking of the Respondent. One of the questions which arises is whether an action under the Contempt of Courts Act, 1971 can be initiated on account of wilful disobedience of a compromise decree or a consent order. Reliance was placed on a decision of the Apex Court in the case of **Babu Ram Gupta Vs. Sudhir Bhasin & Anr (A.I.R 1979 Supreme Court Page 1528)**. Reliance was placed on what

has been held in paragraph Nos.7, 10 and 11 of the said decision. It was argued that in absence of any undertaking recorded in the consent terms, action under the Contempt of Courts Act, 1971 cannot be initiated for disobedience of a compromise decree or a consent order.

2. My attention was invited to another decision of the Apex Court in the case of **Rama Narang Vs. Ramesh Narang & Anr (2007(4) Scale Page 280)**. The Apex Court in the said decision has extensively dealt with its earlier decision in the case of Babu Ram (supra). In paragraph Nos.25 and 26 of the said decision of the Apex Court held thus:

> "25. All decrees and orders are executable under the Code of Civil Procedure. **Consent decrees or orders are of course also executable, would not take away the Courts jurisdiction to deal with a matter under the Act provided the Court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice.** The decisions relied upon by the

> respondents themselves hold so as we shall subsequently see.
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> 26. In such circumstances it would neither be in consonance with the statute, judicial authority, principle or logic to draw any distinction between the willful violation of the terms of a consent decree and willful violation of a decree which is passed on adjudication. **The decision in Baburam Gupta's case must, therefore, be limited to its won peculiar facts**".(Emphasis supplied)

3. The view taken by the Apex Court is that the decision in the case of Babu Ram is limited to its own peculiar facts. The Apex Court held that merely because a particular order is passed by consent of the parties, it would not take away the jurisdiction of the Court to deal with the matter under the Contempt of Courts Act, 1971 provided the Court is satisfied that the violation of the order or decree is such that if proved, it would warrant punishment under section 13 of the said Act on the ground that the contempt substantially interferes or tends to substantially interfere with due course of justice. The Apex Court further proceeded to observe that it was not possible to draw a distinction between

the wilful violation of the terms of the consent decree and wilful violation of a decree which is passed on adjudication. Therefore, in a given case an action can be initiated under the said Act of 1971 where the breach alleged is of a consent order.

4. Turning back to the facts of the case, the present Petitioners are the Plaintiffs Nos.1f and 1g. The Respondent herein is the second Defendant. There are various clauses provided in the consent terms filed in the trial Court. One of the clauses is that the second Defendant i.e the Respondent herein will allow the Petitioners only for their life time to use for their residence the room No."C" on the western side facing the municipal lane on the West side which is more particularly described in the report of the Court Commissioner. There is a reciprocal promise that the Respondent will be entitled to use rest of the suit house without any interference by the present Petitioners. The consent terms further provide that the Petitioners will remove their articles, if any, lying in the suit house except in room No."C". In clause 6 of the consent terms there is an undertaking of the Petitioners incorporated that they will not interfere with or obstruct the use and occupation of the suit house by the Respondent or his heirs.

5. After having perused the averments made in the Petition and the averments made in affidavit in reply, it is obvious that the execution and implementation of the agreed terms depends on performance of reciprocal promises which are incorporated in the consent terms. Considering the rival allegations it is difficult to come to conclusion that there is any wilful or deliberate breach of the order on the part of the Respondent. This is not a case for initiating action under the Contempt of Courts Act, 1971. Therefore, the notice issued is discharged and Contempt Petition is disposed of.

6. It is however made clear that it will be open for both the parties to execute the decree in accordance with law and all contentions of the parties in that behalf are expressly kept open. It is obvious that the observations made in this order are for limited purpose of considering whether a case is made out for initiating an action under the Contempt of Courts Act, 1971.

JUDGE